

**CITY OF NEWARK
DELAWARE**

SPECIAL COUNCIL MEETING MINUTES

May 7, 2018

Those present at 6:00 p.m.:

Presiding:	Deputy Mayor A. Stuart Markham, District 6 District 1, Mark Morehead District 2, Jerry Clifton District 3, Jennifer Wallace District 4, Chris Hamilton District 5, Jason Lawhorn
Absent:	Mayor Polly Sierer
Staff Members:	Acting City Manager Tom Coleman City Secretary Renee Bensley City Solicitor Paul Bilodeau Acting Deputy City Manager Mark Farrall Community Affairs Officer Megan McGuriman

1. Mr. Markham called the special meeting to order at 6:00 p.m. He advised there was only one item on the agenda which was the discussion of a resolution to support House Bill 395. Mr. Markham stated that a resolution had no force of law and was basically a letter to the legislature stating Council's support. The legislature would have to pass the House, pass the Senate, the Governor would have to sign it and it would come back to the City for discussion about creating the tax.

2. **RESOLUTION NO. 18-__ : A RESOLUTION TO EXPRESS SUPPORT FOR HOUSE BILL 395 TO ALLOW ALL MUNICIPALITIES WITHIN THE STATE OF DELAWARE THE OPTION TO IMPOSE AND COLLECT A LODGING TAX**

Ms. Bensley read the resolution title into the record.

Mr. Coleman stated there were only 15 legislative days left in Dover this session. They were rapidly approaching a 3-week legislative break so City staff felt it was critical that the City get the resolution of support to Dover before they break so that the current momentum did not stall. Mr. Coleman thanked Council for agreeing to hold this special meeting. During the 2018 budget discussions, staff had presented several ideas for ways to diversify the City's revenue sources to try to reduce reliance on utility transfers and the variability inherent in consumption-based rates. During the discussion, one of the ideas that received consensus support was to pursue ways to get authorization to levy a lodging tax. Staff reached out to New Castle County over the winter to discuss the possibility of working together on a lodging tax bill like the one in Wilmington. While the County's immediate feedback was supportive, the City did not hear from them again until just before the bill was introduced. Fortunately, they were true to their word and drafted their legislation such that it would not apply to incorporated areas of New Castle County which was different from previous attempts that would have applied to Newark hotels.

Mr. Coleman shared that staff had worked with other Delaware municipalities, the University of Delaware, local and area legislators, professional contacts, labor organizations and the City lobbyist to secure a bipartisan coalition of supporters that understood the benefit that came from an additional option for revenue and agreed that Newark's residents should be treated the same as Wilmington's. Since the legislation was introduced in Dover, Mr. Coleman had heard several arguments against the bill, HB395. Mr. Coleman had heard the bill called a 38% tax increase. This was not true. HB395 did not directly increase any tax rate whatsoever. It gave all municipalities in Delaware the same options for revenue diversification as what had been granted to Wilmington. It gave Newark City Council the option to discuss whether a local lodging tax was right for Newark and would require a local ordinance and public hearing to do that, if Newark decided that was the path it wanted to take.

Mr. Coleman had also heard this bill would slow new hotel development and result in a loss of business impacting their ability to create and maintain jobs. Mr. Coleman reiterated that this bill did not increase any taxes or fees, so it would not have any impact on Newark's hotels or the amount of business

they brought in. Any Newark-specific tax increase would be a separate ordinance with a first and second reading at a public hearing. Another argument was that HB395 did not include Airbnb. This argument was somewhat of a red herring because the current state lodging tax did not apply to Airbnb-style rentals, not just HB395. The goal of HB395 was not to fundamentally change the state lodging tax system, even if that was something the state would eventually consider. The goal of the bill was to address inequity between the taxing authority granted to Wilmington and what was being given to everyone else. Newark and other municipalities were facing the same financial issues as Wilmington and should be given the same tools to help their residents address the problems. Any change to state law to include Airbnb-type rentals should start at the state level, as that would represent a fundamental change to the entire lodging tax system and would need to take the revenue impact of such a dramatic change into account.

Mr. Coleman had heard a complaint that the revenue generated was not going toward tourism. The County had made it clear that it was their intention to implement the full 3% and they did not currently plan to direct any toward tourism. This decision had not been made for Newark. Should HB395 pass, Mr. Coleman would expect to have a thorough discussion with Council on what tax level was appropriate for Newark and whether they should be setting aside portions of that revenue for set purposes like supporting Aetna or the successor to the DNP, which would likely be City-wide and work to promote all of Newark's businesses including hotels.

3. Mr. Markham opened the floor to discussion from Council.

Mr. Clifton noted that he had discussed the AirBnB issue and it had become a sensitive issue for him. He had come from the transportation industry and had seen how ride-share companies such as Uber and Lyft had flown under the regulatory purview of the State. He saw AirBnB this way. He felt that from a practical standpoint, they were running a motel when they rented rooms out. From another perspective, he felt there were inherent safety issues that people were walking into and may not be aware of. Mr. Clifton felt that if this should go forward, there should be a conversation on this topic. Mr. Hamilton asked for some clarification on ride-share companies. Mr. Clifton said that they did not fall under any of the regulatory, insurance or driver background requirements that a regular transportation company would have to subject their owners and employees to.

Mr. Morehead thanked the Acting City Manager for clarifying that they were not discussing raising the tax at this stage tonight. They were discussing having the ability according to State law in the Charter to do something at a later date. He thought this was a distinct difference and they needed to pay attention.

Ms. Wallace reiterated Mr. Morehead's position and felt that they were focusing on what was fair for the residents of Newark to have the same ability as residents of Wilmington. She added they were not talking about adding a tax now but just having the right to do so. She felt this was fair and equitable.

4. Mr. Markham opened the floor to public comment.

Bill Sullivan stated he was opposed to this meeting being on such short notice. He could not get his members out to the meeting to testify and he felt this was illegal. Mr. Sullivan noted that the City's Facebook page was being censored. He stated he had posted things there that were not posted on the public side. Mr. Sullivan was a representative of the Delaware Hotel Lodging Association which was strongly opposed to not only HB395 but also HB377 which was the other side of this tax deal. Mr. Sullivan advised that Delaware hotels already paid an 8% lodging tax. There was no sales tax in Delaware but they paid a sales tax on hotel rooms. The guests paid it when they came to the hotel and often asked what happened to tax-free Delaware. Mr. Sullivan stated it was not quite tax free because there was a tax the State imposed. Now there would be another tax that municipalities and the County imposed. He did not think this was fair. Mr. Sullivan asked why they were going after hotels. He noted they were good citizens who paid their taxes, bought electricity from the City and supported community events. He asked about all the other businesses. He said the County led the way and he felt Newark's mayor and council were in cahoots with the County. He was shocked that this could happen in Newark. Mr. Sullivan said that 38% was 3% added on to 8%. He said this was 38% increase on the taxes people would pay to stay in a hotel room in Newark.

Mr. Sullivan noted that other areas had similar taxes, some higher, some lower, and he had always felt it was to his competitive advantage to be in Delaware with no sales tax and a fair lodging tax. If this was taken away, he was not as competitive and would lose business. He felt that the tax would drop, the jobs would drop and the development would slow down. Mr. Sullivan noted that increased lodging tax would not only be paid by leisure travelers but also by business travelers and associates of local business. He felt that they were raising taxes on local businesses by doing this. He knew from doing hotel development that one of the first questions was the local property tax and lodging tax. This affected the

financing of a hotel. If they could not get the demand, they would not get the responding revenues they needed. He was studying building a hotel on the STAR Campus now and this would be a negative to that project.

Colin Grice ceded his time to Mr. Sullivan. Mr. Sullivan shared that many communities used a lodging tax increase to fund tourism but he had not heard that discussion. Mr. Sullivan said there was a meeting with the County Executive on Friday and he was hoping that the Executive saw the value of sharing the revenue. If the tax went through, Mr. Sullivan would like some of that to go to tourism to counteract the negative impact of these taxes. Other towns and counties did this. Montgomery County, PA had passed a 2% tax and told the hotels that if they could not get the occupancy, they would kick back the tax. Mr. Sullivan would be happy to hear that. Mr. Sullivan's association supported the Delaware Sports Commission where they competed with other states for collegiate, professional and youth sports hosting. This had been a success, particularly in Newark. If there was a higher lodging tax, it would be a negative to family sports travel. The groups were rate conscious and would be concerned about the tax. The lodging tax would not change in Kent and Sussex so Mr. Sullivan expected those groups to move south leaving Newark hotels with empty rooms. That was not acceptable. As Mr. Clifton had said, they were not mentioning Airbnb. Mr. Sullivan felt it was important that they look at an illegal hotel operator in the City. Mr. Sullivan said that there were 169 listings on Airbnb for Newark alone. Mr. Sullivan said these people were not paying taxes, not following safety rules and not supporting the City. He felt that the City should go after them and not hotels. He felt this was where money could be made. He had told this to the State as well. Mr. Sullivan noted that other states and cities had realized this.

Mr. Sullivan said that last year, the State was ready to take away all tourism dollars allocated to the 3 counties as part of a joint finance community action. He had lost all tourism marketing money because of one entry in a bill that had been law since 1992 that would have taken all that money away from hotels. He would have had no money to market for tourism in New Castle County and that would have been a negative. The world of the State was different. They had cut hotels off quickly and they had gotten it restored at the last minute.

Rick Celeste, 815 Hilltop Road, wished to comment on renters including Airbnb. There was a lot of student housing both University-sponsored and privately-sponsored. He recalled that many years ago, there was a proposal to put a tax on renters in general. He was not sure how the City would go after the University dorms. He thought it was a good time to bring that topic up again and add that into the mix of balancing the tax increase. He noted that the City was seeing a lot of wear and tear on its infrastructure and the University was planning to add 5,000 more students over the next few years. This would mean more cars and foot traffic. He understood this had not gotten much traction last time which was about 8 years ago. He thought it was time to consider this again.

Lena Thayer, District 5, felt it was important to note that this was a decision on whether to support the bill not to impose the tax at this time. Ms. Thayer felt it was never good to turn your nose up at the option of having money available on the table to take advantage of in the future.

5. Mr. Markham returned discussion to the table for final Council comments.

Mr. Lawhorn stated his position was that this tax was something that everyone around Newark was doing. He thought it would be nice for Newark to have that tool. He felt it was in Newark's best interest to support the resolution. He also noted there was much conversation and research that needed to be done in the next round when Newark actually considered implementing a tax. Mr. Lawhorn felt that Mr. Sullivan had touched on some good points and Mr. Lawhorn would be doing research about it. He would also be reaching out to residents for their opinions and how it affected them.

Mr. Markham noted that it was written into the Newark Charter that Council was allowed to have special meetings with a certain amount of notice. He recalled this tax had shown up in Council minutes from at least the last 6 months, in the budget hearings and in 2015. The State had made it clear that they restricted what taxes the City was allowed to do. Mr. Markham shared that a constituent had approached him to ask why they could not tax the rentals. In 2014, the State specifically said that no matter what a city's charter said, they could not impose another tax without the State allowing it. Mr. Markham knew that Newark Council was prohibited from doing that. He also knew that the University had been approached several times about a fee on students and has respectfully declined that. Mr. Markham noted that if the City could get PILOT funds and the State sent a payment in lieu of taxes, that would be an excellent replacement for this. He felt that there were many instances in which the City's hands were tied. If they did not have the tax today, they must ask the State for that tax. Otherwise, it was just utilities and property tax. Mr. Markham felt the City had little opportunity to raise taxes and fees without the State having the conversation. He stated that the City was trying to fill in and spread out its funding sources.

Mr. Markham agreed regarding AirBnB. He agreed they should be included in some type of tax structure. He reiterated that the City was prohibited from doing that. At this point, he felt that using some of the money for tourism would be quite acceptable. This was a discussion for the next phase.

There was no further Council comment and no amendments to the resolution.

6. MOTION BY MS. WALLACE, SECONDED BY MR. LAWHORN: TO APPROVE THE RESOLUTION IN SUPPORT OF HB395 ALLOWING ALL MUNICIPALITIES WITHIN THE STATE OF DELAWARE THE OPTION TO IMPOSE AND COLLECT A LODGING TAX.

MOTION PASSED: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Sierer, Wallace.

Nay – 0.

Absent – Sierer.

7. **The meeting adjourned at 6:26 p.m.**

Renee K. Bensley, CMC
Director of Legislative Services
City Secretary

/sjc